

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2010 Nr. 46

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden, ten behoeve van Aruba, en de Regering van Australië inzake de toewijzing van heffingsrechten met betrekking tot bepaalde inkomsten van natuurlijke personen en tot het vaststellen van een regeling voor onderling overleg ter zake van wijzigingen van verrekenprijzen;
Canberra, 16 december 2009*

B. TEKST

Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the Government of Australia for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments

The Kingdom of the Netherlands, in respect of Aruba,
and
the Government of Australia (“the Parties”),

Recognising that the Parties have concluded an Agreement on the Exchange of Information with Respect to Taxes, and

Desiring to conclude an Agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments,

Have agreed as follows:

Article 1

Persons covered

This Agreement shall apply to persons who are residents of one or both of the Parties.

Article 2

Taxes covered

1. The existing taxes to which this Agreement shall apply are:
a) in Australia, the income tax imposed under the federal law of Australia;

- (hereinafter referred to as “Australian tax”).
b) in Aruba, the following taxes:
(i) the income tax (inkomstenbelasting);
(ii) the wages tax (loonbelasting); and
(iii) the profit tax (winstbelasting);
(hereinafter referred to as “Aruban tax”).

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Parties shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.

3. This Agreement shall not apply to taxes imposed by states, municipalities, local authorities or other political subdivisions, or possessions of a Party.

Article 3

Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

a) the term “Australia”, when used in a geographical sense, excludes all external territories other than:

- (i) the Territory of Norfolk Island;
(ii) the Territory of Christmas Island;
(iii) the Territory of Cocos (Keeling) Islands;
(iv) the Territory of Ashmore and Cartier Islands;
(v) the Territory of Heard Island and McDonald Islands; and
(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone or the seabed and subsoil of the continental shelf;

b) the term “Aruba” means that part of the Kingdom of the Netherlands that is situated in the Caribbean area and consisting of the Island of Aruba;

c) the term “competent authority” means in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of Aruba, the Minister of Finance and Economic Affairs or an authorised representative of the Minister;

d) the term “Party” means Australia or the Kingdom of the Netherlands in respect of Aruba, as the context requires;

e) the term “national”, in relation to a Party, means any individual possessing the nationality or citizenship of that Party;

f) the term “person” includes an individual, a company and any other body of persons;

g) the term “tax” means Australian tax or Aruban tax as the context requires; and

h) the term “transfer pricing adjustment” means an adjustment made by the competent authority of a Party to the profits of an enterprise as a result of applying the domestic law concerning taxes referred to in Article 2 of that Party regarding transfer pricing.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, for the purposes of the taxes to which this Agreement applies, with any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4

Resident

1. For the purposes of this Agreement, the term “resident of a Party” means:

a) in the case of Australia, a person who is a resident of Australia for the purposes of Australian tax; and

b) in the case of Aruba, a person who is a resident of Aruba for the purposes of Aruban tax.

2. A person is not a resident of a Party for the purposes of this Agreement if the person is liable to tax in that Party in respect only of income from sources in that Party.

3. Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Parties, then the person's status shall be determined as follows:

a) the individual shall be deemed to be a resident only of the Party in which a permanent home is available to that individual; if a permanent home is available in both Parties, or in neither of them, that individual shall be deemed to be a resident only of the Party with which the individual's personal and economic relations are closer (centre of vital interests);

b) if the Party in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the Party of which the individual is a national;

c) if the individual is a national of both Parties or of neither of them, the competent authorities of the Parties shall endeavour to resolve the question by mutual agreement.

4. Where, by reason of paragraph 1, a person other than an individual is a resident of both Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

Article 5

Pensions and retirement annuities

1. Pensions (excluding government pensions) and retirement annuities paid to an individual who is a resident of a Party shall be taxable only in that Party. However, pensions and retirement annuities arising in a Party may be taxed in that Party where such income is not subject to tax in the other Party.

2. The term "retirement annuity" means:

a) in the case of Australia, a superannuation annuity payment within the meaning of the taxation laws of Australia;

b) in the case of Aruba, a stated sum payable in consequence of retirement and paid periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth; and

c) any other similar periodic payment agreed upon by the competent authorities.

Article 6

Government service

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Party or a political subdivision or a local authority

thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Party if the services are rendered in that Party and the individual is a resident of that Party who:

- (i) is a national of that Party; or
- (ii) did not become a resident of that Party solely for the purpose of rendering the services.

2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.

b) However, such pensions and other similar remuneration shall be taxable only in the other Party if such income is subject to tax in that Party and if the individual is a resident of, and a national of, that Party and is also not a national of the first-mentioned Party.

3. Notwithstanding the provisions of paragraphs 1 and 2, salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by a Party or a political subdivision or a local authority thereof may be taxed in accordance with the laws of a Party. The provisions of Article 5 shall apply to pensions in respect of services rendered in connection with any trade or business carried on by a Party or a political subdivision or a local authority thereof.

Article 7

Students

Payments which a student or business apprentice, who is or was immediately before visiting a Party a resident of the other Party and who is temporarily present in the first-mentioned Party solely for the purpose of their education or training, receives for the purpose of their maintenance, education or training shall not be taxed in that Party, provided such payments arise from sources outside that Party.

Article 8

Mutual agreement procedure in respect of transfer pricing adjustments

1. Where a resident of a Party considers the actions of the other Party results or will result in a transfer pricing adjustment not in accordance with the arm's length principle, the resident may, irrespective of the remedies provided by the domestic law of those Parties, present a case to

the competent authority of the first-mentioned Party. The case must be presented within three years of the first notification of the adjustment.

2. The competent authorities shall endeavour to resolve any difficulties or doubts arising as to the application of the arm's length principle by a Party regarding transfer pricing adjustments. They may also communicate with each other directly for the purposes of this Article.

Article 9

Exchange of information

The competent authorities of the Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the Agreement on the Exchange of Information with Respect to Taxes concluded by the Parties (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Party).

Article 10

Entry into force

The Parties shall notify each other, in writing, through the diplomatic channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided an Agreement on the Exchange of Information with Respect to Taxes is in force between the Parties, thereupon have effect:

- a) in respect of Australian tax, for any year of income beginning on or after 1 July in the calendar year next following the year in which this Agreement enters into force; and
- b) in respect of Aruban tax, for any year of income beginning on or after 1 January in the calendar year next following the year in which this Agreement enters into force.

Article 11

Termination

1. This Agreement shall continue in effect indefinitely, but either of the Parties may, give to the other Party through the diplomatic channel written notice of termination.

2. Such termination shall become effective:

a) in respect of Australian tax, in the year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;

b) in respect of Aruban tax, for any year of income beginning on or after 1 January in the calendar year next following that in which the notice of termination is given.

3. Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through the diplomatic channel of written notice of termination of the Agreement on the Exchange of Information with Respect to Taxes between the Parties, terminate and cease to be effective on the first day of the month following the expiration of a period of 6 months after the date of receipt of such notice.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at Canberra, this 16th day of December 2009 in duplicate.

For the Kingdom of the Netherlands, in respect of Aruba:

C. W. ANDREAE

For the Government of Australia:

SENATOR NICK SHERRY

D. PARLEMENT

Het Verdrag behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge zijn artikel 10 in werking treden op de datum van de laatste van de schriftelijke kennisgevingen langs diplomatieke weg, waarin de partijen elkaar hebben verwittigd van de voltooiing van de constitutionele en wettelijke procedures voor de inwerkingtreding van het Verdrag, mits het in rubriek J hieronder vermelde Verdrag van kracht is.

J. VERWIJZINGEN**Verbanden**

- Titel : Verdrag tussen het Koninkrijk der Nederlanden, ten behoeve van Aruba, en de Regering van Australië inzake de uitwisseling van informatie betreffende belastingen;
Canberra, 16 december 2009
- Tekst : *Trb.* 2010, 45 (Engels)

Uitgegeven de *vijfde* februari 2010.

De Minister van Buitenlandse Zaken,

M. J. M. VERHAGEN